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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS PADILLA,

Defendant and Appellant.

B256033

(Los Angeles County  
Super. Ct. No. TA126718)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,  
Allen J. Webster, Jr., Judge. Affirmed.

Roger P. Curnow, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews,  
Supervising Deputy Attorney General, Corey J. Robins, Deputy Attorney General, for  
Plaintiff and Respondent.

## INTRODUCTION

Defendant and appellant Luis Padilla (defendant) was convicted of first degree murder (Pen. Code, § 187, subd. (a))<sup>1</sup> and of attempted voluntary manslaughter (§§ 664, 192, subd. (a)). On appeal, defendant contends that there is insufficient evidence of premeditation and deliberation to support the jury's verdict of first degree murder and that the trial court erred by refusing to instruct the jury on perfect self defense and on imperfect self defense. We affirm the judgment.

## BACKGROUND

### A. Factual Background

#### 1. Prosecution Evidence

Jesus Orosco, Ruben Orosco, Beatris Orosco, and Nancy Orosco<sup>2</sup> were siblings. Jesus was the victim in defendant's murder conviction. Jesus had once been in a street gang, but had ceased being a gang member by 2006, after his children were born. Ruben had never been in a gang. Jennifer Cano was Jesus's stepdaughter.

Beatris "started hanging out" with defendant and his twin brother, Angel, who also was known as "Spooky" and "Spooks."<sup>3</sup> Defendant admitted to Beatris that he was a member of the Fifth and Hill gang. Nancy understood that defendant, Angel, and their friend "Spanky,"<sup>4</sup> were members of a gang based on defendant's tattoos, and because

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<sup>1</sup> All statutory citations are to the Penal Code unless otherwise noted.

<sup>2</sup> Because Jesus, Ruben, Beatris, and Nancy share the same surname, we refer to them by their first names.

<sup>3</sup> His name was stated as "Angel" and "Miguel" during trial.

<sup>4</sup> Spanky was about 25 or 26 years old, was short but muscular and short, and had a handicap that caused him to walk with a limp.

defendant, Angel, and Spanky told her they were from a gang. Cano visited defendant at his home in Watts two or three times and had become friendly with both him and Angel.

Eric G. was Jesus's brother-in-law. Eric G. went to school with Cano. In September 2011, Eric G. was 14 year old, weighed about 120 pounds, and was around five feet two inches tall. He was not a member of, or even "gang-related with," the Village Boys gang; he merely would "hang around with" members of that gang at school.

In early September 2011, defendant and Angel attended a party (or "kickback") at Jesus's and Cano's home in Compton. Eric G. also attended the party. Cano said at the party that Eric G. belonged to the Village Boys gang. Defendant and Angel also accused Eric G. of belonging to the Village Boys gang, and defendant said to Eric G. in an angry tone, "Fuck Village Boys." Defendant looked "meanly" at Eric G. causing Eric G. to "panic" and become frightened. Eric G. eventually left the party, and Jesus gave him a ride home.

Eric G. was invited to a party to celebrate Cano's 18th birthday, to be held at Jesus's house a few weeks after the party. Cano invited defendant, Angel, and their cousin Jose Jaime to the party, but she did not invite any of their other friends. Eric G. believed that defendant, Angel, and Jaime were members of the Fifth and Hill gang, and Eric G. was fearful about going to the birthday party because he believed that they had been looking at him during the "kickback" as if they wanted to "do something." Eric G. was concerned for his safety and that of others with respect to the upcoming party.

Cano's birthday party was held in the backyard of Jesus's and Cano's home. Cano, Beatris, Jesus, Ruben, Nancy, and other friends and family members, including children, were present. About 60 people attended the party. About 10 to 15 percent of them were children. Eric G. attended the birthday party with his friend "Joshua," who was about 14 or 15 years old.

Jesus searched entrants for weapons. None of the members of the Orosco family group had guns. Jesus patted down defendant before permitting him to enter. Defendant

was with about six other males including Spanky, Angel,<sup>5</sup> Jaime, “Youngster,”<sup>6</sup> and “Blackie.”<sup>7</sup> Eric G. believed that the men with defendant were affiliated with the Grape Street gang or the Fifth and Hill gang. Defendant and his friends were asked to not start any “trouble.”

Eric G. “hung out” in the back yard with, inter alia, Joshua and members of the Orosco family. Eric G. became more frightened when defendant and his friends arrived at the party. At one point, defendant left the party, and then he returned to it. When defendant returned to the party, he was not searched again for weapons.

Defendant and his friends started invoking their gang to Eric G. and Joshua, “diss[ed]” the Village Boys gang, and asked where Eric G. and Joshua were “from.” In a loud, “in your face” manner, Spanky asked Eric G. and Joshua what gang they were from, and said that he was from the Fifth and Hill gang. Blackie said something threatening to Eric G. Eric G. could hear individuals in defendant’s group saying “gang things.” They also yelled, “fuck verga boys,” and “Fifth and Hill.” One of defendant’s friends said to Eric G. and Joshua something to the effect of “[w]hat are you guys doing here,” “get the F’ out of here,” and “[t]his is my neighborhood.”

Nancy told defendant and his friends “not to start [any] drama” because they were having a nice family gathering. Beatris told Spanky to calm down, and began pushing him back from Eric G. and Joshua. Spanky laughed, said he would calm down, walked back to Eric G. and Joshua, said he wanted to shake hands and “squash the beef,” and then punched Joshua in the face. Joshua fell down.

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<sup>5</sup> Eric G. testified that Angel was the biggest in size of the group.

<sup>6</sup> Youngster was apparently Enrique Reyes, and a known member of the “Grape Street Varrio” gang.

<sup>7</sup> At the beginning of the party, some people said that Blackie had just been released from “juvenile hall,” and they were concerned that “something might happen” at the birthday party based on “the mischief” that had occurred at the “kickback.” Eric G. saw Blackie make Fifth and Hill gang hand signs, and Eric G. believed that Blackie was a member of that gang. Cano testified that Blackie was about 15 or 16 years old.

Defendant and about six members of his group, including Angel, Youngster, and Sparky, ran up to Eric G. and Joshua and joined Spanky in attacking them. They were “piling on” Eric G. and Joshua, and Eric G. and Joshua were losing the fight.

Jesus and Ruben separated Eric G. and Joshua from those who were attacking them, and Eric G. and Joshua ran into the house. Jesus told Spanky to calm down and tried to have defendant’s group leave the party.

Jesus asked Spanky “why was he trying to hit on little kids,” and said that Spanky was a “grown man” and “to pick on somebody his own size.” Spanky and Jesus fought, and about six people from defendant’s group, including defendant, joined the fight and “attack[ed]” Jesus. Eric G. heard Jesus “scream[]” in a “scary voice” for the attackers to “stop.” Jesus was “severely” beaten for about one or two minutes; he was punched, kicked, shoved, and pushed. Jesus was on the ground, “rolled up like in a ball, covering his face with his hands.”

Members of the Orosco family, including Beatris, Nancy, Maria (Jesus’s wife), and Ruben, tried to separate the attackers from Jesus. According to Beatris, the members of the Orosco family who participated in the altercation were not “eager participants ready to beat somebody up,” but instead were trying to separate Jesus from defendant and his friends to stop them from striking Jesus. Those family members were “trying to stop all the violence;” they were trying to push the members of defendant’s group down the driveway and into the street. Jesus managed to get off the ground.

There were two gates on the driveway. One gate was located “up against the house,” and the second gate was located at the end of the driveway near the street. Eventually, the members of the Orosco family were able to force defendant and his group outside the first gate, and the struggle continued between the two gates, next to a pickup truck parked in the driveway. The Orosco family members repeatedly told defendant and his friends to leave. The male members of the Orosco family were outnumbered and overwhelmed by defendant and his friends, who continued to resist being expelled and fought with Jesus and Ruben in the driveway.

At one point defendant said that “he was going to the back [yard] to call one of his friends.” When defendant returned he had a gun. The physical assault regarding Jesus had stopped; his wife was pulling him toward their home. The two sides had separated after the Orosco family members who participated in the altercation had pushed defendant and his companions from the backyard and were in the process of securing the driveway gates. Nancy testified that all of the fighting had stopped and the “two sides [had] separated.” The members of the Orosco family had “already pushed all of them [with the exception of defendant] out of the [front] gate.” The members of the Orosco family who had been involved in the fight “were closing the [front] gate, and the only one standing between the gate[s] was [defendant].”

Defendant had a gun that he held out in front of him at about chest level. Defendant manipulated the action, pulling back the slide. Defendant positioned himself “to give himself a better angle” by placing his left leg on the bumper of a pickup truck parked in the driveway, and said, “mother-fucker.” Defendant fired one round at Ruben while smirking; but the shot missed Ruben.

Angel, who was standing next to defendant, said something to him. Defendant pointed the gun at Jesus with both hands and shot him. Jesus fell to the ground and died from a single gunshot wound to the chest.

Nancy testified that it appeared from defendant’s facial expressions when he was shooting the gun that he did not know what he was doing. Cano said that after defendant shot Jesus she told him to leave, and defendant “looked confused, like he didn’t know what to do.” Angel told defendant to run, and defendant and his friends ran away.

Los Angeles Police Officers located defendant and took him into custody. They seized defendant’s cellular telephone, and photographs in defendant’s cell phone depicted a group of people making gang signs similar to gang signs used by the Fifth and Hill gang, and a jersey with “5” on it.

Defendant’s telephone calls when he had been placed in a holding cell were recorded and played for the jury. Defendant called an unknown female. During the telephone conversation defendant said that he had been arrested for murder, and the

“barrio fucked up, homie.” Defendant also said, “I just fuckin’ did it there, homie,” and “somebody had to stand up for my hood, homie.” Defendant also had a telephone conversation with “Wicked,” who said to defendant that defendant should say he was “defending [himself] or something.”

The prosecution’s gang expert, Los Angeles Police Officer Eduardo Alvarez, had a particular expertise regarding the Fifth and Hill gang. “Respect” in Hispanic gang culture was “ultimately the most important thing,” and it would be affirmed through violent gang acts. Hispanic gangs traditionally are very territorial.

Officer Alvarez stated that the Fifth and Hill gang have hand signs and tattoos, commonly consisting of a “5” and an “H.” In Officer Alvarez’s opinion, defendant was a member of the Fifth and Hill gang based on his tattoos, and his admission as shown by field identification cards.

Based on a hypothetical set of facts that closely reflected the prosecution case, Officer Alvarez opined that the question of “where are you from” delivered by someone claiming to be a member of the Fifth and Hill gang was a gang challenge likely to lead to violence. He also opined that the shooting was committed in association with, for the benefit of, or at the direction of a criminal street gang and that the gang members were acting as a gang, not individuals.

## *2. Defendant’s Evidence*

Defendant did not testify or present any evidence in his defense.

### **B. Procedural Background**

The District Attorney of Los Angeles County filed an information charging defendant with murder (victim Jesus) in violation of section 187, subdivision (a) (count 1); assault with a firearm (victim Beatris) in violation of section 245, subdivision (a)(2) (count 2), and attempted willful, deliberate, and premeditated murder (victim Ruben) in violation of sections 664 and 187, subdivision (a) (count 3). The District Attorney alleged as to counts 1 and 3 that defendant personally and intentionally discharged a

firearm in violation of section 12022.53, subdivision (d); as to count 2 that defendant personally used a firearm in violation of section 12022.5; and as to all counts that the crime was committed for the benefit of, at the direction of, and in association with a criminal street gang as defined by section 186.22, subdivision (b)(1)(C).

Following a trial, the jury found defendant guilty on count 1 of first degree murder, on count 3 of the lesser included offense of attempted voluntary manslaughter. The jury acquitted defendant on count 2. The jury found that the special allegations were true.

The trial court sentenced defendant to state prison for a total term of 50 years to life, consisting of a term of 25 years to life for the first degree murder conviction, plus 25 years to life for the firearm enhancement. The court imposed a high term sentence of five years and six months as to the attempted voluntary manslaughter conviction, and ordered that the sentence on it run concurrently to the sentence imposed on the first degree murder conviction. The trial court stayed imposition of sentencing on the gang and other firearm enhancements. The trial court awarded defendant custody credit, and ordered him to pay various fees, fines and penalties. Defendant filed a timely notice of appeal.

## **DISCUSSION**

### **A. Substantial Evidence**

Defendant contends that there is insufficient evidence of premeditation and deliberation to support the jury's verdict of first degree murder on count 1. Defendant therefore argues that the verdict on that count should be reduced to second degree murder. We disagree.

#### *1. Standard of Review*

“In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is



reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] . . . “[I]f the circumstances reasonably justify the jury’s findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.” [Citation.] We do not reweigh evidence or reevaluate a witness’s credibility. [Citation.]’ [Citations.]” (*People v. Scott* (2011) 52 Cal.4th 452, 487.)

## 2. Analysis

In *People v. Burney* (2009) 47 Cal.4th 203, the Supreme Court explained the concepts of premeditation and deliberation in the context of first degree murder. “A murder that is premeditated and deliberate is murder of the first degree. [Citation.] “In this context, ‘premeditated’ means ‘considered beforehand,’ and ‘deliberate’ means ‘formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.’” [Citations.] “An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.” [Citation.] A reviewing court normally considers three kinds of evidence to determine whether a finding of premeditation and deliberation is adequately supported—preexisting motive, planning activity, and manner of killing—but “[t]hese factors need not be present in any particular combination to find substantial evidence of premeditation and deliberation.” [Citation.]” (*Id.* at p. 235.)

““A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] “Deliberation” refers to careful weighing of considerations in forming a course of action; “premeditation” means thought over in advance. [Citations.]”” (*People v. Harris* (2008) 43 Cal.4th 1269, 1286-1287.) The extent of the reflection, not the duration of time, is what is relevant. (*Id.* at p. 1287.)

Defendant argues that there was no evidence that the shooting was the result of any preconceived design or plan because it occurred in connection with “a heated, physical fight,” and after he shot Jesus, defendant appeared confused and “did not know what he was doing.” There was evidence of planning. There was a gang-related motive for the shooting.

Defendant does not dispute on appeal that he was a member of the Fifth and Hill gang. He attended the “kickback” and accused Eric G. of belonging to the Village Boys gang, angrily said to Eric G., “Fuck Village Boys,” and looked at Eric G. as if they wanted to “do something.” When Eric G. left that party, Jesus gave him a ride home.

A few weeks after the “kickback,” defendant attended Cano’s 18th birthday party. Defendant initially entered the party without a gun, but left the party during it and, when he returned, he was not searched again for weapons. Immediately before defendant shot Jesus, he had returned from the back yard with the gun. It reasonably could be inferred that when defendant left the party, he obtained the gun from the car in which he arrived at the party or from somewhere close to the house, and placed the gun in the back yard. His bringing the gun to the party displayed a preconceived plan that he would shoot someone at the party.

At the birthday party, defendant and his friends started their gang talk at Eric G. and his friend Joshua, asking where they were “from,” and of what gang they were members. Officer Alvarez testified that the phrase “where are you from,” was a gang challenge likely to lead to violence. Spanky said that he was from the Fifth and Hill gang. One of defendant’s friends said to Eric G. and Joshua, “what are you guys doing here,” “get the F’ out of here,” and “[t]his is my neighborhood.”

Shortly thereafter, defendant and his friends began fighting with Eric G. and Joshua. Jesus and Ruben separated Eric G. and Joshua from those who were attacking them, and Jesus told defendant to leave the party. Defendant and his group began to fight Jesus. Members of the Orosco family came to Jesus’s aid, seeking to eject defendant and his group from the party. After defendant ran to the back yard and returned with a gun, and after defendant and his companions had largely been ejected from the premises and

the fighting was over, defendant manipulated the action on the firearm, and positioned himself to have a better angle to shoot at Ruben. While smirking, defendant fired one round at Ruben, but he missed. Angel then said something to defendant, and defendant pointed the gun at Jesus with both hands, and shot him.

Defendant's statements during his recorded jailhouse telephone conversations demonstrate that he shot Jesus "to stand up" for the gang, and Officer Alvarez opined that the shooting was committed in association with, for the benefit of, or at the direction of a criminal street gang. There was sufficient evidence of premeditation and deliberation to support the jury's verdict of first degree murder.

## **B. Jury Instructions**

Defendant contends that the trial court erroneously refused to instruct the jury on perfect self defense and on imperfect self defense.<sup>8</sup> We disagree.

### *1. Standard of Review*

Upon request, a party is entitled to have the jury instructed on every theory advanced by that party if the theory is supported by substantial evidence. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572.) "[I]t is the court's duty to instruct the jury not only on the crime with which the defendant is charged, but also on any lesser offense that is both included in the offense charged and shown by the evidence to have been committed." [Citation.] [Citations.] 'Conversely, even on request, the court "has no duty to instruct on any lesser offense unless there is substantial evidence to support such instruction." [Citation.] [Citation.] Substantial evidence "is not merely "any evidence . . . no matter how weak" [citation], but rather "evidence from which a jury composed of reasonable [persons] could. . . conclude[]" that the lesser offense, but not

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<sup>8</sup> Perfect self defense is a defense to murder. (CALCRIM No. 505.) Imperfect self-defense is "not a true defense;" it reduces a killing from murder to voluntary manslaughter. (*People v. Sinclair* (1998) 64 Cal.App.4th 1012, 1016; *People v. Barton* (1995) 12 Cal.4th 186, 201-202.)

the greater, was committed. [Citations.]’ [Citation.] ““On appeal, we review independently the question whether the court failed to instruct on a lesser included offense.” [Citation.]’ [Citation.]” (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1327-1328.)

## 2. *Applicable Law*

### a) Perfect Self Defense

As noted below, defendant requested that the trial court instruct the jury with CALCRIM No. 505, which provides in part, “The defendant is not guilty of (murder/ [or] manslaughter/ attempted murder/ [or] attempted voluntary manslaughter) if (he/she) was justified in (killing/attempting to kill) someone in (self-defense/ [or] defense of another). The defendant acted in lawful (self-defense/ [or] defense of another) if: [¶] 1. The defendant reasonably believed that (he/she/ [or] someone else/ [or] \_\_\_\_\_ <insert name or description of third party>) was in imminent danger of being killed or suffering great bodily injury [or was in imminent danger of being (raped/maimed/robbed/ \_\_\_\_\_ <insert other forcible and atrocious crime>)]; [¶] 2. The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger; [¶] AND [¶] 3. The defendant used no more force than was reasonably necessary to defend against that danger. [¶] Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of death or great bodily injury to (himself/herself/ [or] someone else). Defendant’s belief must have been reasonable and (he/she) must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the [attempted] killing was not justified. [¶] When deciding whether the defendant’s beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation

with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed."

b) Imperfect Self Defense

"California statutes have long separated criminal homicide into two classes, the greater offense of murder and the lesser included offense of manslaughter. The distinguishing feature is that murder includes, but manslaughter lacks, the element of malice. (Compare § 187, subd. (a) ["[m]urder is the unlawful killing of a human being . . . with malice aforethought"] with § 192 ["[m]anslaughter is the unlawful killing of a human being without malice"].)" (*People v. Randle* (2005) 35 Cal.4th 987, 994, overruled on another point in *People v. Chun* (2009) 45 Cal.4th 1172, 1201.)

Defendant requested that the trial court instruct the jury with CALCRIM No. 571, which provides in part, "A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person because (he/she) acted in (imperfect self-defense/ [or] imperfect defense of another). [¶] If you conclude the defendant acted in complete (self-defense/ [or] defense of another), (his/her) action was lawful and you must find (him/her) not guilty of any crime. The difference between complete (self-defense/ [or] defense of another) and (imperfect self-defense/ [or] imperfect defense of another) depends on whether the defendant's belief in the need to use deadly force was reasonable. [¶] The defendant acted in (imperfect self-defense/ [or] imperfect defense of another) if: [¶] 1. The defendant actually believed that (he/she/ [or] someone else/ \_\_\_\_\_ <insert name of third party>) was in imminent danger of being killed or suffering great bodily injury; [¶] AND [¶] 2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger; [¶] BUT [¶] 3. At least one of those beliefs was unreasonable. [¶] . . . [¶] In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant." "Under the doctrine of imperfect self-defense . . . the defendant is deemed to have acted without malice and thus can be convicted of no crime

greater than voluntary manslaughter.’ [Citation.]” (*People v. Randle, supra*, 35 Cal.4th at p. 995.)

### 3. *Background Facts*

When discussing the proposed jury instructions with the trial court, defendant’s counsel stated he will be arguing both perfect and imperfect self-defense to the jury, contending that there was a “reasonable basis” for the instructions because the evidence showed there were “63 people jumping on [seven] people.” Defendant therefore requested the trial court to instruct the jury on perfect self-defense, i.e. CALCRIM No. 505. The prosecutor argued that there was no evidence of self-defense because the fighting was over, defendant was not in any danger when he fired the gun, and there was no evidence that defendant subjectively acted in self-defense. The trial court denied defendant’s request for a perfect self-defense instruction.

Defendant also asked the court to instruct on imperfect self-defense, i.e. CALCRIM No. 571. The trial court denied defendant’s request, stating, “I don’t think that’s applicable for the same reason that perfect self-defense isn’t applicable. Because the standard, I think, is much higher. At least there needs to be evidence of the first two elements, which is actual belief. And there’s no evidence of his actual belief that he was in imminent danger of being killed or G.B.I.”

Defendant later moved for a new trial on the basis that the court failed to instruct on perfect and imperfect self-defense. The trial court denied the new trial motion, again finding no evidence supported having given such instructions.

### 4. *Analysis*

Defendant contends he believed, reasonably or unreasonably, that he was in imminent danger of being killed or suffering great bodily injury. Defendant argues, without citation to the record, that the jury may reasonably conclude from the evidence that the assault by defendant and his friends was “met with deadly force in opposition, i.e., [they] were mobbed.” Without citing to the record, defendant similarly argues that

the “vastly superior numbers [of people who] confronted [him] at the time he shot” is “more than sufficient evidence to support a self-defense instruction.” Elsewhere in his briefs, defendant cites to the record in arguing that “[a]lot of people were involved in the struggle.” Defendant’s citation to the record however provides that those involved in the struggle were defendant, Spanky, Angel, “and the rest of their friends,” on the one hand, and Jesus, Ruben, Luis, one or more of Jennifer’s uncles, and a few females—Nancy, Beatris, Jennifer, and her mother and aunt—on the other hand. There is no evidence that “63 people jump[ed] on [seven] people.” It is not reasonable to conclude from this evidence that at the time defendant shot Jesus, defendant and his friends were being mobbed, or that during the altercation and immediately before shooting, he and his friends were confronted by a vastly superior number of people.

The evidence establishes that defendant and his colleagues resisted leaving the premises. The record also establishes that when defendant shot Jesus, the fighting had stopped and defendant was not in imminent danger of being killed or suffering great bodily injury.

In addition, defendant may not invoke the self-defense doctrines because he and his companions created the circumstances leading up to his shooting of Jesus. “It is well established that the ordinary self-defense doctrine . . . may not be invoked by a defendant who, through his own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which his adversary’s attack or pursuit is legally justified. [Citations.] It follows, a fortiori, that the imperfect self-defense doctrine cannot be invoked in such circumstances.” (*In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1; *People v. Booker* (2011) 51 Cal.4th 141, 182.)

Even had the trial court had erred in failing to instruct the jury on self-defense or imperfect self defense, any such error was harmless. ““A judgment will not be reversed for error[] in jury instructions unless it appears reasonably probable that, absent the error, the jury would have rendered a verdict more favorable to the appellant. [Citation.]’ [Citation.]” (*Scott v. Rayhrer* (2010) 185 Cal.App.4th 1535, 1540; *People v. Watson* (1956) 46 Cal.2d 818, 836 [reasonable probability of a more favorable result standard].)

Defendant contends that *Chapman v. California* (1967) 386 U.S. 18, 24 [harmless beyond a reasonable doubt standard] applies here. Under either standard the error was harmless. The evidence of defendant's guilt of murder is overwhelming. The evidence in the record shows that defendant shot Jesus after the fighting had stopped, defendant's companions had been ejected from the site of the birthday party, and defendant and his companions were not in imminent danger of being killed or suffering great bodily injury.

### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

GOODMAN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.